

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

In re:)	
)	DECISION OF DISAPPROVAL
)	OF REGULATORY ACTION
DEPARTMENT OF)	
MOTOR VEHICLES)	(Gov. Code, sec. 11349.3)
)	
REGULATORY ACTION:)	
Title 13,)	
California Code of Regulations)	OAL File No. 2008-0204-03 S
)	
AMEND: 440.04)	
_____)	

DECISION SUMMARY

The Department of Motor Vehicles (“Department”) proposed to amend the California Code of Regulations, title 13, relating to the Department’s incorporated by reference Occupational Licensing and Disciplinary Guidelines (“Guidelines”).

On March 19, 2008, the Office of Administrative Law (“OAL”) notified the Department of the disapproval of the above-referenced regulatory action. OAL disapproved the regulations for failure to comply with Administrative Procedure Act (“APA”) procedural requirements.

DISCUSSION

Regulations adopted by the Department must generally be adopted pursuant to the rulemaking provisions of the APA. (Gov. Code, secs. 11340 through 11361.) Any regulatory action a state agency adopts through the exercise of quasi-legislative power delegated to the agency by statute is subject to the requirements of the APA, unless a statute expressly exempts or excludes the action from compliance with the APA. (Gov. Code, sec. 11346.) No exemption or exclusion applies to the Department’s proposed regulatory action. Consequently, before these regulations may become effective, the regulations and the rulemaking record must be reviewed by OAL for compliance with the procedural requirements and the substantive standards of the APA, in accordance with Government Code section 11349.1.

INCORRECT APA PROCEDURE

OAL must review rulemaking records to determine whether all of the procedural requirements of the APA have been satisfied. (Gov. Code, sec. 11349.1.) If a rulemaking agency makes a substantive but sufficiently related change to a regulation from that which was originally made

available to the public during the required 45-day public comment period (Gov. Code, sec. 11346.4), the agency must make available to the public for comment, for at least 15 days, the full text of the resulting amendment with the change clearly indicated. (Gov. Code, sec. 11346.8(c).) In addition, the agency must mail a notice stating the period within which comments will be received together with a copy of the full text of the regulations as originally proposed with the proposed change clearly indicated. (California Code of Regulations ("CCR"), tit. 1, sec. 44(a).) This notice must be mailed to certain persons specified in 1 CCR 44(a), which includes all persons whose comments were received by the agency during the 45-day public comment period. (CCR, tit. 1, sec. 44(a)(3).)

On February 16, 2007, the Department published notice in the California Regulatory Notice Register of its proposal to make amendments to the Guidelines. The Department provided the required 45-day public comment period which ran from February 16, 2007 through April 2, 2007. On February 27, 2007, one written comment was received by the Department. Based at least in part on that comment, the Department made some substantive but sufficiently related changes to the Guidelines. The Department prepared a notice dated November 2, 2007, which stated that the Department would accept public comments on the changes for 15 days through November 17, 2007. However, neither this notice nor the full text of the regulation as originally proposed, with the proposed change clearly indicated, was mailed to the commenter as required by 1 CCR 44(a)(3). The Department also prepared and submitted as part of the rulemaking file the confirming statement required by 1 CCR 44(b), but inaccurately stated that "[t]here were no persons ... to whom notice of availability of the modified text had to be mailed."

CONCLUSION

For the reasons set forth above, OAL disapproved this regulatory action. If you have any questions, please contact me at (916) 323-4217.

Date: March 24, 2008



George C. Shaw
Staff Counsel

For:

SUSAN LAPSLEY
Director

Original: George Valverde
Copy: Erik Meyer